



RECEIVED

BellSouth Telecommunications, Inc.

333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

January 6, 2003

TN REGULATORY AUTHORITY
DOCKET ROOM

VIA HAND DELIVERY

Hon. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and XO Tennessee, Inc.*
Docket No. 02-01204

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of BellSouth's Response to the Counter-Complaint of XO Tennessee, Inc.. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc. and XO Tennessee, Inc.*

Docket No. 02-01204

**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC. TO
COUNTER-COMPLAINT OF XO TENNESSEE, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to the purported Counter-Complaint filed by XO Tennessee, Inc. ("XO") on December 5, 2002. XO's Counter-Complaint is a transparent attempt to distract the Authority from the real issue in this case. Under the terms of the Interconnection Agreement negotiated by the parties and approved by the Authority, BellSouth has a clear contractual right to initiate an audit, at its sole expense, of XO records to verify the type of traffic being placed over combinations of loop and transport network elements ("EELs"). On April 26, 2002, more than eight months ago, BellSouth gave XO the required 30 days written notice of its intent to audit. XO has refused to allow such audit in contravention of XO's contractual obligations.

XO's stated reasons for refusing to allow the audit to commence all deal with matters that are not relevant to the commencement of the audit or that do not need to be resolved prior to the commencement of the audit.

Following are specific responses to each of the numbered paragraphs of XO's Counter-Complaint Allegations.

1. XO acknowledges that BellSouth's statements regarding the identification of the Parties and the Authority's jurisdiction over BellSouth's Complaint are accurate. BellSouth has no objection to adding Dana Shaffer to the certificate of service.

2. Admitted.

3. Denied, except that BellSouth admits the FCC's UNE Remand Order was released on June 2, 2000. BellSouth affirmatively states that XO's allegations are wholly irrelevant to the issue in this proceeding. Moreover, the Interconnection Agreement the parties negotiated requires that any modifications be made in the form of written amendments. (See Section 15.2 of the General Terms & Conditions.) Furthermore, the negotiations of the amendment XO complains about was completed within the timeframe provided for in the Agreement.

4. Denied. BellSouth affirmatively states that XO's allegations are wholly irrelevant to the issue in this proceeding.

5. Section 1.4 of the September 8, 2002 Amendment speaks for itself. BellSouth affirmatively states that the audit is reasonably necessary to determine whether XO is providing a significant amount of local exchange service over facilities provided as combinations of loop and transport elements.

6. BellSouth admits that on April 26, 2002, it gave XO the contractually-required 30 days written notice of its intent to audit XO's records. It has been more than eight months since then, and as a result of XO's refusal to abide by the

audit provisions of the Interconnection Agreement it negotiated with BellSouth, the audit has not even commenced.

7. Admitted.

8. Denied. BellSouth further states that XO's allegations are wholly irrelevant to the issue in this proceeding. BellSouth affirmatively states that it worked in good faith to address XO's questions regarding the audit.

9. The correspondence exchanged by the parties speaks for itself.

10. BellSouth admits that the parties exchanged correspondence and that a meeting was ultimately held on September 25, 2002. BellSouth affirmatively states that XO's allegations are wholly irrelevant to the issue in this proceeding. To place XO's allegations this in proper context, BellSouth also states that it attempted to meet several times prior to September 25, 2002 to discuss XO's questions. For example, BellSouth sent a letter to XO on July 18, 2002 requesting a meeting on July 25. XO did not respond until the morning of July 25 and then only after being sent the teleconference bridge number. XO stated merely that it "did not schedule this meeting."

11. Denied. Bellsouth affirmatively states that it is not required to conduct a sampling of circuits to determine if "any potential problem exists" – that is the purpose of the audit. Although it had not obligation to do so, BellSouth presented a list of specific circuits to audit on May 15 and again on June 17, 2002 and has agreed to update that list at the commencement of the audit to include only those circuits still being billed. Neither the FCC's Supplemental Order of

Clarification nor the Interconnection Agreement even contemplate that BellSouth should be required to provide a circuit-by-circuit reason for auditing. The Interconnection Agreement clearly requires new EELs, not just EELs converted from special access circuits, to comply with the FCC's local usage requirements. Bellsouth is well within its rights to audit new EELs as well as converted circuits.

12. Denied. It is XO, not BellSouth, that has refused to abide by the terms of the parties' Interconnection Agreement.

13. Except as expressly admitted herein, all of XO's assertions are denied.

WHEREFORE, BellSouth requests that the Authority:

1. Deny the relief sought by XO in its Counter-Complaint; and
2. Grant the relief requested in BellSouth's Complaint.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

R. Douglas Lackey
675 W. Peachtree St., NE, Suite 4300
Atlanta, GA 30375

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Dana Shaffer, Esquire
XO Communications, Inc.
105 Malloy Street, #100
Nashville, TN 37201


